

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

RIVER BIRCH INCORPORATED  
JEFFERSON PARISH  
AGENCY INTEREST NO. 32219

PROCEEDINGS UNDER THE LOUISIANA  
ENVIRONMENTAL QUALITY ACT  
LA. R.S. 30:2001, ET SEQ.

SETTLEMENT AGREEMENT NO.  
SA-MM-05-0069

ENFORCEMENT TRACKING NOS.  
MM-CN-03-0105  
MM-L-04-0058  
AE-CN-04-0185  
AE-CN-04-0185A

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SETTLEMENT AGREEMENT

The following Settlement Agreement is hereby agreed to between River Birch Incorporated (herein "River Birch" or "Respondent") and the Louisiana Department of Environmental Quality ("LDEQ" or "the Department"), under authority granted by the Louisiana Environmental Quality Act, LSA – R.S.30:2001, et seq. (the "Act").

Introduction

I.

The Respondent owns and operates the River Birch Landfill, a Type I and Type II municipal solid waste landfill located in Waggaman, Jefferson Parish, Louisiana. The facility operates under Solid Waste Standard Permit No. P-0321, as modified by Major Modification No. 7 approved on or about January 7, 2004. The Respondent is also subject to New Source Performance Standards 40 CFR Part 60 Subpart WWW – Standards of Performance for Municipal Solid Waste Landfills, and operates under Title V Permit No. 1340-00223-V0, effective June 5, 2002 as modified by a variance received from the Department on October 28,

2004, which authorized the construction and operation of a gas collection and control system to collect landfill gas. The Respondent generates waste tires under waste tire generator number RG-51-11910. The Respondent is also authorized to discharge certain quantities and qualities of wastewater into Sauls Canal and other waters of the state, under the terms and conditions of Louisiana Pollutant Discharge Elimination System (LPDES) Permit No. LA0099473, effective on April 1, 1999 and which expired on March 31, 2004. The Respondent timely submitted a renewal application for LPDES Permit No. LA0099473 on or about September 30, 2003, and on November 19, 2003, received a variance from LDEQ Water Permits for the chloride limits in its LPDES permit necessitated by the high background chloride levels in the groundwater and receiving waters. LDEQ reissued LPDES Permit No. LA0099473, effective February 1, 2005, which included increased chloride limits.

### **Department's Findings**

#### **II.**

On March 28, 2004, the Department issued a Consolidated Compliance Order and Notice of Potential Penalty, Enforcement Tracking No. MM-CN-03-0105 (the "March 2004 Order") to Respondent, which was based on the following Department's findings of fact:

On or about May 22, 2003, a multi-media inspection was conducted by the Department that revealed the following violations:

- A. The Respondent failed to properly maintain monitoring wells, in violation of LAC 33:VII.709.E.1.c.iii.b. Specifically, the protective posts for the wells MW-3, MW-5, and MW-7 had fallen or were not stable; erosion had occurred under the concrete slab of monitoring well MW-6; and small cracks were observed in monitoring well MW-2.
- B. The Respondent failed to cover waste tires, in violation of LAC 33:VII.10519.H.1.
- C. Respondent did submit inaccurate data on a Discharge Monitoring Report Respondent submitted a revised DMR to correct this error on or about May 27, 2003. The failure to submit accurate information on a DMR is in

violation of LPDES permit LA0099473 (Part II Section A.12, and Part III Section A.2), La. R.S. 30:2076 (A)(3), LAC 33:IX.501.A, and- LAC 33:IX.2355.A.

- D. The inspection conducted by the Department on or about May 22, 2003, and a subsequent file review conducted by the Department on or about February 3, 2004, revealed the following permit exceedances as reported by Respondent on its Discharge Monitoring Reports (DMRs) and Noncompliance Reports (NCRs):

Date	Outfall	Parameter	Permit Limit	Sample Result
May 2003	002	Fecal Coliform	400 cols/100ml	1,200 cols/100ml
March 2003	001	Chlorides	250 m/L	307 mg/L
	002	Fecal Coliform	400 cols/100ml	5,000 cols/100ml
February 2003	002	TSS	45 mg/L	49 mg/L
	002	BOD	45 mg/L	51 mg/L
September 2002	001	Chloride	250 m/L	566 mg/L
August 2002	002	TSS	45 mg/L	78 mg/L
March 2002	002	BOD	45 mg/L	53 mg/L
January 2002	002	TSS	45 mg/L	49 mg/L
	002	BOD	45 mg/L	90 mg/L
November 2001	002	TSS	45 mg/L	58 mg/L
	002	BOD	45 mg/L	269 mg/L
	002	Fecal Coliform	400 cols/100ml	13,400 cols/100ml
September 2001	001	Chloride	250 mg/L	292 mg/L
	001	BOD	45 mg/L	67 mg/L
	002	TSS	45 mg/L	287 mg/L
	002	BOD	45 mg/L	114 mg/L
August 2001	002	TSS	45 mg/L	50 mg/L
July 2001	001	Chloride	250 mg/L	340 mg/L
	001	BOD	45 mg/L	273 mg/L
	002	TSS	45 mg/L	57 mg/L

Date	Outfall	Parameter	Permit Limit	Sample Result
	002	BOD	45 mg/L	353 mg/L
	002	Fecal Coliform	400 cols/100ml	560,000 cols/100ml
June 2001	001	BOD	45 mg/L	160 mg/L
	001	TSS	45 mg/L	54 mg/L
April 2001	001	TSS	45 mg/L	79 mg/L
March 2001	002	TSS	45 mg/L	70 mg/L
	002	BOD	45 mg/L	252 mg/L
February 2001	002	BOD	45 mg/L	50 mg/L
	002	Fecal Coliform	400 cols/100ml	12,800 cols/100ml

Each effluent violation is a violation of LPDES permit LA0099473 (Part I, and Part III, Section A.2), La. R.S. 30:2076(A)(3), LAC 33:IX.501.A, and LAC 33:IX.2355.A.

In response to the March 2004 Order, River Birch made a timely request for hearing. In addition, River Birch responded to and stated its position on all of the above allegations referenced in Paragraph II in correspondence to the Department dated May 5, 2004. River Birch and the Department also entered into an Agreement to pursue alternate dispute resolution discussions, which expired on May 12, 2005. The Department granted River Birch's hearing request on May 13, 2005. However, the parties informed the Administrative Law Judge of ongoing settlement discussions, and the hearing has been held in abeyance.

### III.

During a January 22, 2004 inspection of the River Birch facility, the following areas of concern were noted:

- a. One guard post was damaged on Monitor Well 15.
- b. Hinges on Monitor Wells 3 and 5 were rusted and lids no longer attached.
- c. Some litter was viewed along the back of the landfill.

- d. Some erosion was noted on area of interim cover, but area was seeded to establish vegetation.

River Birch responded to and stated its position on all of the areas of concern noted in the

January 22, 2004 inspection in correspondence to the Department dated May 7, 2004.

#### IV.

On June 23, 2004, the Department issued a Warning Letter, Enforcement Tracking No. MM-L-04-0058 (the "Warning Letter") to Respondent, which was based on Areas of Concern noted by the Department during the March 22-25, 2004 multimedia inspection of the River Birch facility. Those Areas of Concern are summarized as follows:

- a. "Inspectors noted high VOC readings from some leachate collection piping system and from the surface of the landfill on the Northwest side," but no significant levels of VOCs existed around the landfill perimeter.
- b. One guard post on Monitor Well MW-3 was observed by the inspectors as being unstable. According to the LDEQ Field Interview Form, Inspector Observations and Additional Observations by Inspector Wayne Desselle, the guard post was repaired by the end of the inspection.
- c. The hinge on Monitor Well MW-6 was rusted and the cover not attached to the casing. According to the LDEQ Field Interview Form, Inspector Observations and Additional Observations by Inspector Wayne Desselle, the hinge was repaired by the end of the inspection.
- d. "Some erosion channels [were] viewed in [the] interim cover on the back side slope of the landfill." However, the inspectors noted that the "area was seeded to establish vegetation."
- e. On March 23, 2004, the inspectors arrived at the landfill at approximately 4:15 a.m. to inspect the daily cover from March 22 and noted insufficient cover directly behind the "tipper."
- f. "Records/Reports review revealed the following permit limit exceedances:

May 2003	Outfall 002 (Fecal Coliform 1200 col/100 ml)
June 2003	Outfall 001 (Chloride 325 mg/L) Outfall 002 (TSS 77 mg/L)
September	Outfall 002 (Fecal Coliform 700 col/100ml)

October	Outfall 001 (Chlorides 318 mg/L max, 297 mg/L min)
November	Outfall 001 (Chlorides 364 mg/L max)"

River Birch responded to and stated its position on all allegations contained in the Warning Letter in correspondence to the Department dated May 7, 2004.

#### V.

On June 15, 2004, the Department issued a Consolidated Compliance Order and Notice of Potential Penalty, Enforcement Tracking No. AE-CN-04-0185 (the "June 2004 Order") to Respondent, which was based on the following findings of fact:

- A. The Department received the Respondent's semiannual monitoring report for the period January 1, 2002, to June 30, 2002, on April 7, 2003. The report was due on September 30, 2002. The late submittal of the semiannual monitoring report is a violation of General Condition K of Title V Permit No. 1340-00223-VO, LAC 33:III.501.C.4, and Section 2057 (A)(2) of the Act.
- B. The Respondent reported emissions of 122 tons of VOC's for the 2002 calendar year, which is above the maximum permitted limit of 92.65 tons per year. This is a violation of General Condition I of Title V Permit No. 1340-00223-VO, LAC 33:II.501.C.4, and Sections 2057 (A)(1) and 2057 (A)(2) of the Act.
- C. The Respondent reported emissions of 175 tons of VOC's for the 2003 calendar year, which is above the maximum permitted limit of 92.65 tons per year. This is a violation of General Condition I of Title V Permit No. 1340-00223-VO, LAC 33:II.501.C.4, and Sections 2057 (A)(1) and 2057 (A)(2) of the Act.

River Birch filed a timely request for hearing on the June 2004 Order. In addition, River Birch responded to and stated its position on all allegations arising out of the above alleged findings of fact contained in the June 2004 Order in correspondence to the Department dated July 14, 2004. River Birch and the Department also entered into an Agreement to pursue alternate dispute resolution discussions, which expired on May 12, 2005. The Department

granted River Birch's hearing request on May 13, 2005. However, the parties informed the Administrative Law Judge of ongoing settlement discussions, and the hearing has been held in abeyance.

## VI.

On August 15, 2005, based on information submitted by River Birch pertaining to its VOC testing pursuant to its Title V permit, the Department issued Amended Consolidated Compliance Order and Notice of Potential Penalty, Enforcement Tracking No. AE-CN-04-0185A (the "August 2005 Order"), deleting Parts B and C of Paragraph V of the Findings of Fact portion of the June 2004 Order which alleged exceedances of the VOC emissions limits contained in River Birch's Title V permit. River Birch timely filed a Limited Protective Request for Hearing on the August 2005 Order on or about September 14, 2005. River Birch and the Department also entered into an Agreement to pursue alternate dispute resolution discussions.

## VII.

A June 13, 2005 inspection report by the Department alleges that River Birch had purchased a mobile source air curtain destructor from Mr. Hamilton Miller on or about October 23, 2002. The air curtain destructor has never been in use at River Birch. Representatives of River Birch and the Department had difficulties locating documents relating to the air curtain destructor, including but not limited to, Mr. Miller's air curtain destructor permit, apparently due in part to Mr. Miller's bankruptcy. Based on these difficulties, on September 15, 2005, Ms. Beth Scardina issued a letter to River Birch and to Mr. Miller allowing until October 19, 2005 to file the proper change of ownership forms. The appropriate change of ownership information was filed with the Department on October 19, 2005. The Department's finding is that River Birch failed to notify the Department of the change in ownership of the air curtain destructor and to file

the appropriate forms within ninety (90) days of the change in ownership, in violation of LAC 33:III.517.G.

### Terms & Conditions

#### VIII.

Respondents denies that it committed any violations rendering it liable for any fines, forfeitures, and/or penalties. Nonetheless, in the interest of avoiding the time, expense and uncertainty of further protracted litigation, the parties to this Settlement Agreement (the "Settlement" or "Agreement") have agreed to fully and finally compromise and settle all of the allegations which are the subject of the above-referenced matters on the terms and conditions set forth herein and to compromise, settle and dismiss with prejudice the above-referenced matters as to all claims therein.

#### IX.

Respondent, without making any admission of facts or liability under state or federal statutes or regulations, agrees to pay, and the Department agrees to accept, a payment in the amount of Thirteen Thousand and no/100 (\$13,000.00) Dollars, of which the Department represents that Nine Hundred Thirty Two and 71/100 Dollars (\$932.71) accounts for the Department's direct enforcement costs and Two Thousand Sixty Seven and 29/100 (\$2,067.29) represents the Department's indirect enforcement costs, in full and final settlement of any and all claims raised by LDEQ in the above-referenced enforcement actions.

#### X.

The total amount of money expended by Respondents on cash payments to LDEQ, as described above, shall be considered a civil penalty for tax purposes, as required by La. R.S. 30:2050.7(E)(1).

XI.

Respondent further understands that the Department may consider the inspection report(s), the Consolidated Compliance Orders and Notices of Potential Penalty and Warning Letters, Enforcement Tracking Nos. MM-CN-03-0105, MM-L-04-0058, AE-CN-04-0185 and AE-CN-04-0185A, and this Settlement for the purpose of determining compliance history in connection with any future enforcement or permitting action by the Department against Respondent. In any such action, the Respondent shall be estopped from objecting to the above-referenced documents being considered as proving the violations alleged herein for the sole purpose of determining Respondent's compliance history.

XII.

Neither by entering into this Settlement nor by taking any action in accordance with it (including making the payments required by the Agreement), shall Respondent be deemed to have admitted any liability for any purpose or any responsibility for, or wrongdoing relating to, the matters addressed in this Settlement, or to have admitted any issues of law or fact related to or arising out of the matters addressed in the Settlement. It is the intent of the parties to the Settlement that the execution of this Settlement, the terms and conditions of this Settlement, or any act or performance by the Respondent under this Settlement shall not be (i) admissible in any proceeding for the purpose of imputing, implying, or otherwise raising an inference of wrongdoing by the Respondent, or (ii) used against the Respondent in any other proceeding with any third party not a signatory to the Settlement.

XIII.

This Settlement shall be considered a final order of the Secretary for all purposes, including, but not limited to, enforcement under La. R.S. 30:2025(G)(2), and Respondent hereby

waives any right to administrative or judicial review of the terms of this Settlement. Respondent, however, expressly reserves the right to administrative or judicial review of the actions of the Department acting upon, interpreting, applying and/or enforcing the terms of this Settlement. Respondent further expressly reserves any and all rights, defenses, claims, demands, and causes of action which it may have with respect to any matter, action, event, claim or proceeding relating in any way to the matters addressed in this Settlement against any person, firm or corporation except as expressly provided herein. Respondent does not admit, and retains the right to contest in any subsequent proceedings, other than proceedings for the purpose of enforcing this Agreement, the validity of the facts or the conclusions of law contained herein, except as is provided in Paragraph XI, above.

#### XIV.

The Settlement is being made in the interest of settling the State's claims and avoiding for both parties the expense and effort involved in litigation or an adjudicatory hearing. In agreeing to the compromise and settlement, the Department considered the "Nine Factors" for issuing civil penalties set forth in La. R.S. 30:2025(E) of the Act.

#### XV.

The Respondent has caused a public notice advertisement to be placed in the official journal of the parish-governing authority in Jefferson Parish, Louisiana. The advertisement, which was approved by the Department in form, wording and size, announced the availability of the Settlement for public view and comment and the opportunity for public hearing. Respondent has submitted a proof-of-publication affidavit to the Department and, as of the date this Settlement is executed on behalf of the Department, more than 45 days have elapsed since publication of the Notice.

XVI.

Payment is to be made within thirty (30) days from notice of the Secretary's signature. If payment is not received within that time, this Agreement is voidable at the option of the Department. Payments are to be made by check, payable to the Department of Environmental Quality, and mailed or delivered to the attention of Darryl Serio, Office of Management and Finance, Financial Services Division, Department of Environmental Quality, P. O. Box 4303, Baton Rouge, Louisiana 70821-4303. Each payment shall be accompanied by a completed Settlement Payment Form (Exhibit A).

XVII.

In consideration of the above, any claims for penalties or other relief are hereby compromised and settled in accordance with the terms of this Settlement.

XVIII.

Each undersigned representative of the parties certifies that he or she is fully authorized to execute this Settlement Agreement on behalf of his/her respective party, and to legally bind such party to its terms and conditions.

WITNESSES:

RESPONDENT RIVER BIRCH  
INCORPORATED

Nancy H. Fridge  
Printed Name: Nancy H. Fridge

BY:

A. J. Ward Jr  
(signature)

Linda Montalbano  
Printed Name: LINDA MONTALBANO

A. J. WARD JR  
(printed name)

TITLE:

Pres.

THUS DONE AND SIGNED in duplicate original before me this 15<sup>th</sup> day of  
March, 2006, in Gretna, Louisiana

R J B-  
NOTARY PUBLIC

Printed name and I.D. No.: Peter J. Butler #3731

My commission expires: is for Life

WITNESSES:

STATE OF LOUISIANA

Mike D. McDaniel, Ph.D., Secretary  
Department of Environmental Quality

Printed name: \_\_\_\_\_

BY:

Harold Leggett  
Printed name: \_\_\_\_\_

Printed name: \_\_\_\_\_

Harold Leggett, Assistant Secretary  
Office of Environmental Compliance

THUS DONE AND SIGNED in duplicate original before me this 27<sup>th</sup> day of  
April, 2005, in Baton Rouge, Louisiana.

Randall S. Bond  
NOTARY PUBLIC

Printed name and I.D. No.: Randall S. Bond 27771

My commission expires: \_\_\_\_\_

Approved:

Harold Leggett, Assistant Secretary

Harold Leggett